Supreme Court, U.S.
FILED

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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1995

GERONIMO AMIGABLE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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68 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the money laundering statute, United States Code section 1956(a)(1), requires the government to trace the property involved in the subject financial transaction to the proceeds of the specified unlawful activity?

2. Whether a defendant is entitled to an entrapment instruction where the government originates an elaborate scheme to defraud and, when the scheme is near completion, informs an unpredisposed defendant of the fraud, and then instructs a government agent to complete the fraudulent transaction?

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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1995

GERONIMO AMIGABLE,	)
	)
Petitioner,	)
	)
vs.	)
	)
UNITED STATES OF AMERICA,	)
	)
Respondent.	)
	)

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, Geronimo Amigable,[1] respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered on January 12, 1996.

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[1]There are no parties to the proceedings other than those named in the caption to this petition.

OPINION BELOW

On January 12, 1996, the Court of Appeals entered its opinion affirming petitioner's conviction of four counts of mail fraud in violation of 18 U.S.C. section 1341, and two counts of money laundering, in violation of 18 U.S.C. section 1956. On February 27, 1996, the Court of Appeals entered an order denying the petition for rehearing and suggestion for rehearing en banc. A copy of the published opinion, 73 F.3d 1508 (9th Cir. 1996), is attached hereto as Appendix "A". A copy of the February 27, 1996, order denying the petition for rehearing is attached as Appendix "B".[2]

JURISDICTION

On January 12, 1996, the Court of Appeal entered its opinion affirming the conviction of petitioner for four counts of mail fraud and two counts of money laundering. On February 27, 1996, the Court of Appeal entered an order denying the petition for rehearing and suggestion for rehearing en banc. The

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[2]There are no parties to the proceedings other than those named in the caption to this petition.

jurisdiction of this Court is invoked under Title 28 U.S.C. section 1254(1).

STATUTORY PROVISION INVOLVED

The statute involved in the case is 18 U.S.C. section 1956 set forth in full in Appendix "C". This case also involves the Due Process Clause of the Fifth Amendment to the United States Constitution.

STATEMENT OF THE CASE

On October 6, 1993, an indictment was filed in the United States District Court for the Northern District of California, charging Geronimo Amigable with four counts of mail fraud and two counts of money laundering. (C.R. 1; E.C.R. 1)[3] After a jury trial, petitioner was convicted of four counts of mail fraud (18 U.S.C. § 1341) and two counts of money laundering (18 U.S.C. § 1956) on September 23, 1994. (C.R. 117)

The convictions arise out of an FBI investigation of fraudulent personal injury claims submitted to insurers. The FBI

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[3]"C.R." refers to the Clerk's Record; "E.C.R." refers to the Excerpt of Clerk's Record.

also investigated "capping" whereby a person would refer auto accident cases to clinics or law offices and would be paid some portion of the ultimate settlement. (II R.T. 215-216)[4]

The agent playing the role of "capper" would introduce an agent posing as an accident victim to a medical clinic. (II R.T. 224) The agent accident victim would tell the clinic that he or she was in an automobile accident and request treatment for back and neck pain. (II R.T. 220)

The agent patient would tell the clinic he or she could not return for treatment. (II R.T. 225-226) The clinic personnel would sometimes refer the agent patient to a law firm. (II R.T. 226-227)

The inflated medical bills would be forwarded to the law firm. (II R.T. 227) The agents were instructed to communicate to law office personnel that the medical bills were false. (II R.T. 228)

After taking the case, the law offices would typically send

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[4]"R.T. refers to the Reporter's Transcript.

a demand letter to the adjuster at the insurance company responsible for handling the claim. (II R.T. 229) The FBI told the insurance adjusters involved that the cases were phony and the adjusters took instructions from the FBI regarding handling the claim. (II R.T. 230)

FBI Agent Yee brought a case involving an undercover agent posing as accident victim "Rich Fong" to petitioner's law office in March, 1991. (II R.T. 240). Fong presented medical bills reflecting 16 or 17 treatments, but the agent patient only received four to six treatments. (II R.T. 240)

The Fong case was adjusted through Aetna Casualty and Surety, which obtained directions from the FBI regarding how the Fong claim should be settled. (II R.T. 422)

A law office administrator sent Aetna a demand letter on April 9, 1991, which included the inflated medical bills for Fong's case.

On July 17, 1991, an administrator settled the Fong case for $3,000. (III R.T. 431-432) On July 23, the FBI told Aetna to hold the check until July 25 because no agents had yet spoken

with petitioner. (II R.T. 277-278; III R.T. 432)

On August 6, 1991, Agent Yee called the law office to set up an appointment with petitioner to inform him of the fraudulent nature of the bills. (III R.T. 382) Yee had not yet had any contact with appellant, but had been dealing with other law office personnel for the past nine months. (III R.T. 382-383) On August 7, 1991, the FBI told Aetna to stall in issuing the check. (III R.T. 434)

On August 13, 1991, in a telephone conversation, Yee introduced himself to petitioner as Robert Wong and set up an appointment. (III R.T. 389) Yee asked petitioner about the Fong case; petitioner told Yee to talk to the administrator. (IV R.T. 563-564) Yee told petitioner that the bills were "about $3,000 and 30 visits. After Yee told petitioner that Fong went to the clinic only five times, appellant replied, "Uh-huh." (IV R.T. 565)

On August 14, 1991, on the FBI's instruction, Aetna sent the $3,000 check and release in settlement of the Fong case. (III R.T. 435; 438-439) Two of the mail fraud counts were predicated on the mailing of the settlement check and release.

On August 27, 1991, another agent called petitioner to inform him that he was bringing a new client, Steve Young, to petitioner's office. (IV R.T. 610) Young had inflated medical bills. (II R.T. 248-249) The agent met with petitioner and told him that Young attended the clinic four or five times, that the clinic "helped Young out," and that the medical bills reflected 20 or 30 visits. (VI R.T. 788) Appellant told the agent the few number of visits could be a reason why a previous attorney had dropped the Steve Young case. (VI R.T. 788)

On September 16, 19961, the Fireman's Fund Insurance Company received a settlement demand from petitioner's office on the Young case. (V R.T. 634-636) The altered bills were presented to the insurance company as part of the demand package. (II R.T. 251-252) On September 26, 1991, Fireman's Fund sent a $4,350.00 settlement check and release in the Young case. (V R.T. 645-646)

The mailings of the settlement check and releases in the Young case formed the basis for the other two mail fraud counts.

Petitioner testified he passed the California State attorney's

bar in 1990. (VIII R.T. 1183-1184) He started handling personal injury matters after he opened an office in Stockton, California. (VIII R.T. 1183-1184)

Petitioner relied on his staff for much of the work involved. (IX R.T. 1215) Petitioner's staff would interview and sign clients up. (XI R.T. 1217) His staff also handled the investigation and obtained all the necessary documents to prosecute the personal injury claims. (XI R.T. 1218)

When agent Yee called petitioner on August 13, 1991, he was going over several immigration and personal injury matters. (IX R.T. 1215) There was a lot of activity in the office and clients waiting for him in the reception area. (IX R.T. 1215)

Petitioner testified Fong told him that he went to the clinic a couple of times. Petitioner recalled looking at his own file on the case and seeing that it had settled for $3,000 on the basis of five visits. (VIII R.T. 1203) At the time, petitioner thought the medical bills had been paid, evaluated by the insurance company, and that they were not fraudulent. (VIII R.T. 1203-1204)

During the August 27 meeting with agents regarding the

Young case, petitioner was concerned about the agent's statement regarding inflated medical bills, but wanted to review the medical bills and report and instructed his administrator to call the doctor to verify the accuracy of the bills. (VIII R.T. 1208-1209, 1230) Petitioner told the agent to bring Steve Young into the office so he could interview him. (VIII R.T. 1209, 1229)

Prior to the matter being submitted to the jury, petitioner requested an entrapment instruction; the trial court denied petitioner's request. (IX R.T. 1309-1310)

The Court of Appeal concluded there was insufficient evidence to warrant an entrapment instruction.

The government's theory on the money laundering counts was that the settlement proceeds from the Fong and Young cases were ultimately paid to agent cappers to promote the specified unlawful activity, mail fraud, and to conceal the nature of the capper's interest in the proceeds of the settlement.

Evidence was presented that petitioner's office administrator and a third party, Paul Ragasa, paid agent "cappers" a portion of the settlement proceeds of the Fong and Young cases

as payment for bringing the cases into petitioner's office. During a meeting with the agent "cappers," petitioner told agents he would pay them a referral fee.

A bank officer testified that the Fong and Young settlement checks (the proceeds of the specified unlawful activity) were deposited into petitioner's client trust account in October, 1991. (V R.T. 718-720) From July to November, 1991, $27,000 was transferred from petitioner's trust account to petitioner's general law office account. (V R.T. 721-722) Checks totalling $6,300 were subsequently drawn off of petitioner's general account in favor of a third party, the Ragasa Financial Corporation. (V R.T. 722-724) The Ragasa Financial Corporation then wrote two $300 checks made payable to the agent cappers as referral fees. (V R.T. 724)

In the indictment, the government alleged that payment of the capping fees was the requisite financial transaction made with the proceeds of the mail fraud upon which the government based the money laundering charges.

During his cross-examination of Fields, petitioner

attempted to show that all of the proceeds from the mail fraud deposited into Ragasa's account had been drained and the account had reached a zero balance before Ragasa deposited additional money of his own into the account. Ragasa wrote the checks to the cappers with his own untainted money. (V R.T. 736-742) The district court ruled the questioning was irrelevant because the government need only show that tainted funds were commingled with untainted funds in an account, and at some point, funds were used from that account to pay the cappers. (V R.T. 736-742)

The Court of Appeal for the Ninth Circuit concluded the money laundering statute did not require the government to establish that the money used in the financial transaction to pay the referral fees was actually obtained from the specified unlawful activity.

REASONS FOR GRANTING THE WRIT

I.

WHETHER A CONVICTION FOR MONEY LAUNDERING REQUIRES THAT THE GOVERNMENT PROVE THAT THE FINANCIAL TRANSACTION IN FACT INVOLVED PROCEEDS OF A SPECIFIED UNLAWFUL ACTIVITY IS AN IMPORTANT QUESTION OF FEDERAL LAW WHICH SHOULD BE SETTLED BY THIS COURT

The Court of Appeal concluded that petitioner's proffered evidence showing the funds used in the financial transaction were not the actual dollars or "proceeds" acquired from the specified unlawful activity was irrelevant to appellant's defense of the money laundering charge (18 U.S.C. sec. 1956(a)(1)). It held the government need not prove the financial transaction was made with "proceeds" of the specified unlawful activity, but need merely establish a "direct relationship between the illegally acquired . . . proceeds and the subsequent [financial transaction]." (Court of Appeal Opinion, pp. 282-283.)

The language of the statute does not support such an interpretation. The money laundering statute, 18 U.S.C.

§ 1956(a)(1), provides, in relevant part:

> Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity --
>
> (a)(i) with the intent to promote the carrying on of specified unlawful activity ... shall be sentenced ...

[Emphasis added]

The statute requires that the defendant conduct or attempt to conduct, not just any transaction, but a financial transaction which "in fact involves the proceeds of specified unlawful activity." Petitioner's proffered evidence would show the funds used in the financial transaction were not proceeds. This evidence, which would negate an element of the crime, conducting a financial transaction which "in fact involves" the proceeds of specified unlawful activity, was relevant.

The Court of Appeal interpreted the term "in fact" in

subsection 1956(a)(1) as not requiring evidence of tracing. Citing United States v. Manarite, 44 F.3d 1407, 1414, n. 10 (9th Cir.) cert. denied, 115 S.Ct. 2610 (1995), the Court of Appeal interpreted this language as merely distinguishing those cases under subsection 1956(a)(3), in which proceeds used in the financial transaction constitute government property. Petitioner submits that the term "in fact" was not merely designed to distinguish those cases involving tainted money and those involving government property, but, instead, requires that the subject financial transaction be conducted with the actual proceeds of specified unlawful activity.

Here, the indictment specifically alleged the operative financial transactions were payments made to cappers, not flushing money through bank accounts. The government bore the burden of proving that the capping payments were paid with illegal proceeds. The government chose to base the money laundering charges not on placing the money into the various bank accounts, but on payment on the capping fees. The fact that the tainted funds had been deposited into the bank account, by itself, is

insufficient to prove money laundering as charged in the indictment. If that were the case, a bank account would remain "tainted" forever; money deposited into tainted accounts years later could presumably constitute "proceeds" of unlawful activity. Petitioner should have been permitted to show none of the funds used for capping were derived from the specified unlawful activity. The interpretation of the money laundering statute adopted by the Court of Appeals in this case seriously diminishes the government's burden of proving that the financial transaction was conducted with property known to be illegal proceeds.

Because the interpretation of the money laundering statute involves an important federal question, this Court should grant the petition for writ of certiorari.

II.

AN ENTRAPMENT INSTRUCTION IS WARRANTED WHERE THERE IS EVIDENCE THAT THE GOVERNMENT ORIGINATED AN ELABORATE SCHEME TO DEFRAUD, APPROACHED AN UNPREDISPOSED PERSON AND INFORMED HIM OF THE FRAUDULENT ACTIVITY TO BE ABLE TO PROSECUTE HIM FOR MAIL FRAUD

The Court of Appeal held that an entrapment instruction was not warranted by the evidence because petitioner did not demonstrate any reluctance to engage in criminal conduct. However, this Court has repeatedly held that, in their zeal to enforce the law, "government agents may not originate a criminal design, implant in an innocent's person mind the disposition to commit a criminal act, and then induce commission of the crime so that the government may prosecute. Jacobson v. United States, 112 S.Ct. 1535, 1540 (1992); Sorrells v. United States, 287 U.S. 435, 442, 53 S.Ct. 210, 212.

Here, the government agents initiated every meeting and phone conversation with petitioner's law office. Their scheme was well under way and the case had been settled when agents first

approached petitioner; Aetna was simply waiting for the FBI to send the check to petitioner's law office. The FBI told the adjuster at Aetna to hold the check because they had not yet spoken with petitioner to inform him that his client, a government agent, had presented a fraudulent claim to his office. On August 13, 1990, the agent just informed petitioner the bills were fraudulent. The very next day, the FBI instructed Aetna to mail the settlement check. One of the counts of mail fraud was based upon the FBI directed mailing of the settlement check only one day after petitioner was informed of the fraud wholly engineered by government agents.

Prior to that first contact on August 14, 1990, there was no evidence petitioner had engaged in any criminal conduct. It was undisputed the law office had no prior cases with the doctors or clinics involved in the sting operation. Petitioner had no criminal record; he was a member of the California State Bar. The agents initiated every meeting and phone conversation with respect to both the mail fraud and the capping.

Here, the government did not simply provide petitioner

with an opportunity to commit a crime; instead, the government engineered an entire fraudulent scheme, let petitioner in on the scheme at the final hour of its completion, and then directed a party cooperating with the FBI to complete the fraudulent scheme by mailing the settlement check. Under these facts, there was ample evidence to warrant giving an entrapment instruction.

CONCLUSION

For the foregoing reasons, petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit.

DATED: May 24, 1996 Respectfully submitted,

Robert E Boyce

ROBERT E. BOYCE
Attorney for Petitioner
GERONIMO AMIGABLE

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1995

GERONIMO AMIGABLE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

DECLARATION OF SERVICE

Robert E. Boyce, a member of the Bar of this Court, hereto certifies that on May 24, 1996, I mailed copies of the enclosed Writ of Certiorari as the following:

Clerk, (Original & 40 copies)
United States Supreme Court
One First Street, N.E.
Washington, D.C. 20543

United States Court of Appeal
For the Ninth Circuit
Post Office Box 193939
San Francisco, CA 94119-3939

Solicitor General
Department of Justice
Washington, D.C. 20530

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Geronimo I. Amigable
Register No. 88322-011
3705 West Farm Road
Lompoc, CA 93436

All parties required to be served have been served.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24th day of May, 1996, at San Diego, California.

Robert E Boyce
ROBERT E. BOYCE

APPENDIX "A"

UNITED STATES OF AMERICA
Plaintiff-Appellee
v.
AGNES MARBELLA
Defendant-Appellant

No. 94-10592
D.C. No. CR-93-00510-MHP

Appeal from the United States District Court for
The Northern District of California,
Marilyn H. Patel, District Judge, Presiding
Argued and Submitted December 8, 1995 --
San Francisco, California

UNITED STATES OF AMERICA
Plaintiff-Appellee
v.
GERONIMO AMIGABLE
Defendant-Appellant

No. 94-10594
D.C. No. CR-93-00510-MHP
United States Court of Appeals
Ninth Circuit
Filed January 12, 1996

Appeal from the United States District Court for
The Northern District of California,
Marilyn H. Patel, District Judge, Presiding
Argued and Submitted December 8, 1995 --
San Francisco, California

Before: J. Clifford Wallace and David R. Thompson, Circuit

Judges, and William J. Rea, District Judge.** Opinion by Judge Thompson.

COUNSEL

Victor S. Palacios, San Francisco, California, for defendant-appellant Marbella.

Laura Schaefer, Law Offices of Robert E. Boyce, San Diego, California, for defendant appellant Amigable.

Stephen L. Meagher, Assistant United States Attorney, San Francisco, California, for the plaintiff-appellee.

THOMPSON, Circuit Judge:

Agnes Marbella appeals her conviction on two counts of mail fraud, in violation of 18 U.S.C § 1341. Geronimo Amigable appeals his conviction on four counts of mail fraud, in violation of 18 U.S.C. § 1341, and two counts of money laundering, in violation of 18 U.S.C. § 1956.

Both Marbella and Amigable contend the district court erred by refusing to give an entrapment instruction and by imposing time limitations on the cross-examination of two government agents. Marbellsa also argues the district court erred by excluding certain testimony.

Amigable argues the government failed to produce

sufficient evidence to support his conviction on the money laundering counts.

We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

FACTS

The convictions arise out of an investigation of fraudulent personal injury claims submitted to California insurers. The FBI, in conjunction with other federal and local authorities, conducted an extensive investigation, focusing on inflated medical bills presented to insurers by medical clinics and law firms. The investigation also targeted the use of "cappers," individuals who receive a percentage of a settlement for referring a patient to a medical clinic and/or law firm.

Typically, an undercover agent would pose as an accident victim. An agent posing as a capper would introduce the agent/victim to a medical clinic. The agent/victim would complain of pain but, after a few visits, would inform the clinic

he or she could not return for treatments. Several clinics then falsified medical records to represent that the agent/victim had received more treatments than actually provided.

A medical clinic participating in the scam would refer the agent/victim to a law office to make a settlement demand on the insurer. With knowledge of the fraudulent medical records, the law firm would submit the records to the insurer, along with a demand letter. In some instances, a percentage of the settlement would be paid to the agent/capper who brought the agent/victim to the law firm.

The investigation of the Amigable law firm began when Dr. Rolando Bueno and his wife Lamar Bueno, employed by St. Anthony's Medical Clinic, represented to undercover agents that the Amigable law firm paid referrals. Eventually, three undercover agents claiming personal injuries were referred to the Amigable law office. The charges against Marbella and Amigable resulted from fraudulent claims made on behalf of

agents/victims Richard Fong and Steve Young.

Investigator Rob Yee, posing as capper Rob Wong, contacted the Amigable firm in March 1991 to refer Agent Richard Hong, posing as client Fong. Although Fong received only five medical treatments, his medical bills indicated he received treatments during at least fifteen visits. Amigable presented a settlement demand to Aetna Casualty and Surety (Aetna), including a copy of the inflated medical bills.

Aetna originally offered $3,000 in settlement, Adriana Tarver, the Aetna adjuster, and Marbella, Amigable's office administrator, negotiated the settlement of the Fong claim. After Aetna rejected several counter-offers, Marbella informed Tarver that Fong would accept the $3,000 offer. The FBI requested Tarver to delay payment until agents could inform Marbella and Amigable that the medical reports were inflated.

Investigator Yee, posing as capper Wong, then called Marbella to discuss the Fong case. In the course of this

conversation, Investigator Yee told Marbella that Fong had received medical treatments on only five occasions, after Marbella stated the medical reports reflected thirty visits. Marbella responded, "Okay."

Approximately one week later, Investigator Yee spoke on the phone with Amigable. After stating the medical reports reflected thirty visits, Investigator Yee told Amigable that Fong only received treatment on five visits. Amigable responded, "Uh-huh."

Pursuant to the FBI's request, Aetna's adjuster Tarver contacted Marbella to verify the accuracy of the medical reports. When Marbella confirmed the reports, Aetna mailed the settlement check to Amigable's law office, and in return was mailed a release. These two mailings formed the basis for counts one and two of the indictment, charging mail fraud against Marbella and Amigable. The jury convicted Amigable on these two counts, but could not reach a unanimous verdict

with respect to Marbella.

The second case focused on a claim made on behalf of agent/victim Young. Agent Tim Louie, posing as prior client Fong and now a capper, introduced Investigator John Auvinen, posing as client Young, to Amigable. Young, who had been treated by Dr. Appolonia Dimapilis, received medical bills representing that he had visited the clinic twenty times. Young, however, had only visited the clinic five times.

In his initial telephone call to Amigable about Young, Agent Louie told Amigable that Young had visited the clinic only four or five times, but the bills reflected twenty visits. Amigable responded, "Uh-huh." Later that same day, Agent Louie met personally with Marbella and Amigable, and again stated that Young had visited the clinic only five times, but the medical reports reflected twenty visits. Agent Louie stated the clinic "helped [Young] out" because Young was looking for a job.

Agent Louie and Amigable then discussed payments for referrals. Amigable said he would give Agent Louie one-third of his fee from the settlement proceeds, but warned Agent Louie that Amigable was not supposed to speak about such payments.

Amigable then sent a settlement demand letter to Fireman's Fund Insurance Company. The amount of this settlement demand included medical bills for Young's inflated visits to the clinic. This mailing was the basis for count three of the indictment, charging mail fraud. The jury convicted Marbella and Amigable on this count.

Fireman's Fund agreed to settle the claim and mailed a check for $4,350 to Amigable. This mailing was the basis for count four of the indictment, charging mail fraud. The jury convicted both Marbella and Amigable on this count.

Later, Investigator Yee, posing as capper Wong, and Agent Louie met with Marbella and Paul Ragasa at Amigable's

law office. Ragasa gave Investigator Yee and Agent Louie checks for the referrals.[1] The checks were drawn on an account of the Ragasa Financial Corporation. Ragasa explained that the transactions were initiated by Marbella and that Amigable was not involved in the payments because Amigable "doesn't want to involve himself." Ragasa then explained the payment of referral fees "is not legal in California." The payment of these two referral fees was the basis for the two money laundering counts, charged only against Amigable. The jury convicted Amigable on both counts.

At trial, Marbella and Amigable testified they believed the Fong case settled on the basis of only five medical visits. They also testified Marbella verified the number of medical visits for the Young claim with Dr. Dimapilis and they determined the medical reports were not inflated. Finally, Amigable testified that, although he initially agreed to pay the referral fees, he later changed his mind because his wife

informed him the payments would be unethical. He testified that he then instructed his staff not to pay any referral fees and that he was unaware Ragasa paid the referral fees to Investigator Yee and Agent Louie.

The jury returned its guilty verdicts, and these appeals followed.

DISCUSSION

A. Entrapment Instruction

Both Marbella and Amigable contend the district court erred by refusing to give an entrapment instruction. The district court declined to give the instruction because it was inconsistent with Amigable's defense that he was unaware of the mail fraud. The court also declined to give the instruction because the evidence did not support an entrapment defense.

Although an entrapment instruction would have been inconsistent with Amigable's defense of lack of knowledge, he would have been entitled to the instruction if it was sufficiently

supported by the evidence. Mathews v. United States, 485 U.S. 58, 62 (1988); United States v. Simas, 937 F.2d 459, 462 (9th Cir. 1991).

A defendant need only present "slight" evidence on two factors to be entitled to an entrapment instruction: "(1) a government agent induced him or her to commit an illegal act that (2) he or she was not predisposed to commit." United States v. Sotelo-Murillo, 887 F.2d 176, 179 (9th Cir. 1989). Because it is clear that neither Amigable nor Marbella presented sufficient evidence to establish lack of predisposition, we address only that factor.

In determining whether a defendant presented sufficient evidence of a lack of predisposition, we review five factors:

> the character or reputation of the defendant, including any prior criminal record; [2] whether the suggestion of the criminal activity was initially made by the Government; [3] whether the defendant was engaged in

> the criminal activity for profit; [4] whether the defendant evidenced reluctance to commit the offense, overcome only by repeated Government inducement or persuasion; and [5] the nature of the inducement or persuasion supplied by the Government.

Id. at 181 (citation omitted). The absence or presence of reluctance is the most important factor. Id.

Marbella and Amigable did not express any concern after the agents informed them the medical bills were inflated for the Fong and Young cases. Marbella did not respond, and Amigable simply responded, "Uh-huh." Neither made any attempt to notify Aetna after learning they had submitted fraudulent medical bills in the Fong case. Further, after learning the medical bills were inflated in the Young case, Marbella and Amigable sent the medical bills to the insurer along with a demand letter. At no time did Marbella or Amigable exhibit any reluctance or hesitation in pursing settlements based on the

fraudulent medical bills.

Further, there is no evidence the agents suggested to Marbella or Amigable that they should submit the fraudulent medical bills to the insurers. The agents merely informed Marbella and Amigable that the bills were false. Marbella and Amigable made the decision to submit the bills anyway. Moreover, although the agents may have first raised the issue of referral fees, they contacted the Amigable firm only after the Buenos informed them the firm was willing to pay referral fees. Finally, the agents did not pressure Marbella or Amigable and did not attempt to persuade them to engage in the fraudulent activity.

The only factor weighing in favor of Marbella and Amigable is their lack of any criminal record. However, because the other factors clearly weigh against them, we conclude they did not present sufficient evidence of a lack of predisposition to warrant an entrapment instruction.

B. Exclusion of Ragasa's Testimony

Marbella argues the district court erred by excluding Ragasa's proposed testimony that Liguya Doan[2] told him the agents were "gangsters." Marbella sought to introduce this statement to prove Ragasa paid the agents the referral fees because he was afraid of them. The district court excluded the statement because the court found it to be irrelevant. We agree.

Ragasa's alleged fear is not relevant to whether Marbella participated in mail fraud. Marbella had committed the mail fraud before Doan told Ragasa the agents were gangsters. Marbella was not charged with criminal activity in relation to the payment of the fees. The district court did not err by excluding the statement.

C. Time Limitations on Cross-Examination.

Marbella and Amigable both argue the district court violated their confrontation rights by imposing a time limit on the cross-examination of Investigator Yee and Agent Louie.

After Amigable's counsel had used a substantial amount of time for cross-examination, the district court restricted further cross examination to one-half hour per agent.

We review de novo whether the limitation on crossexamination violated Marbella's or Amigable's right of confrontation. United States v. Jones, 982 F.2d 380, 383 (9th Cir. 1992). The district court, however has considerable discretion in restricting cross-examination. United States v. Jenkins, 884 F.2d 433, 435 (9th Cir.), cert. denied, 493 U.S. 1005 (1989). A restriction imposed on cross-examination "does not violate the Confrontation Clause unless it limits relevant testimony and prejudices the defendant." United States v. Shabani, 48 F.3d 401, 403 (9th Cir. 1995).

The district court did not impose any time limitations upon the cross-examination by Marbella's counsel. Marbella has not identified any questions the court prohibited her from asking or how the time limitation otherwise prejudiced her. Her

confrontation challenge fails.

Amigable filed two statements explaining the areas he would have explored absent the time limitation. With regard to Agent Louie, Amigable would have explored "more fully" particular phone calls and meetings. With regard to Investigator Yee, Amigable would have asked him why the agents' questions and Amigable's responses were vague and furtive, further questions about a certain transcript, and about unspecified declarations of good faith and fair dealing made by Marbella and Ragasa.

Amigable does not explain why he would have pursued these areas. Nor does he identify what exculpatory evidence the questioning would have produced or how his inability to ask the questions resulted in prejudice. The district court found that Amigable's counsel already had demonstrated the agents lacked a clear recollection of their communications with Marbella and Amigable and that further examination would be

unproductive. The record indicates the jury had "sufficient information to appraise the biases and motivations" of the agents. United States v. McClintock, 748 F.2d 1278, 1290 (9th Cir. 1984) (citation omitted), cert. denied, 474 U.S. 822 (1985). We conclude the time limitations on cross-examination did not violate Amigable's right of confrontation.

D. Money Laundering

1. Sufficiency of the Evidence

Amigable next argues the government did not introduce sufficient evidence to support his conviction for money laundering, in violation of 18 U.S.C. § 1956. Amigable's money laundering conviction was predicated upon the use of the Ragasa Financial Corporation bank account to pay the cappers referral fees from the illegally obtained settlement proceeds.

We review the evidence in the light most favorable to the government to determine if any rational trier of fact could have found the essential elements of the crime beyond a

reasonable doubt. United States v. Vgeri, 51 F.3d 876, 879 (9th Cir. 1995). We conclude the government's proof was sufficient.

To support a conviction for money laundering under 18 U.S.C. § 1956(a)(1), the government must prove Amigable (1) engaged in a financial transaction which involved proceeds from specified illegal activity, (2) knew the proceeds were from illegal activity, and (3) intended the transaction either to promote the illegal activity or to conceal the nature, source, or ownership of the illegal proceeds.[3] See United States v. Garcia, 37 F.3d 1359, 1364 (9th Cir. 1994), cert. denied, 115 S.Ct. 1699 (1995); United States v. Baker, 63 F.3d 1478, 1494-95 (9th Cir. 1995).

The government presented sufficient evidence that Amigable engaged in a financial transaction which involved proceeds derived from illegal activity. As discussed more fully below, the settlement of fraudulent claims by use of the United

States mail generated proceeds which triggered payment of the referral fees.

The government also presented sufficient evidence that Amigable was aware and agreed that a certain percentage of the settlement proceeds would be paid to the agents as a referral fee. The evidence established that a portion of the illegally obtained settlement proceeds was deposited into the Ragasa Financial Corporation bank account and Amigable caused that account to be used to fund the referral fee payments to the cappers.

The referral fee payment scheme promoted the underlying mail fraud activity by encouraging future cases from cappers. The scheme also promoted the underlying fraud by concealing the use of cappers from the insurers. The government presented evidence that insurers consider the use of cappers as indicative of fraudulent claim inflation. By concealing the use of cappers, Amigable avoided heightened

scrutiny of claims by the insurers.

Amigable argues the evidence did not establish that he paid the referral fees to acquire cases with inflated medical reports. He argues he paid the fees to obtain only legitimate cases. This argument is meritless. The evidence showed that Amigable paid cappers who brought him cases with medical bills he knew were inflated, and he obtained settlements based on those bills. The jury easily could have inferred he was paying cappers for bringing him phony cases.

Amigable also argues the government's proof was legally insufficient because the government was required to prove Amigable's intent was to conceal the source of the proceeds. This argument is contrary to Ninth Circuit precedent. Baker, 63 F.3d at 1495. Section 1956(a)(1) describes the mens rea elements of money laundering in the disjunctive. Id. The government established Amigable paid the fees to promote the underlying illegal activity. The government need not also prove

Amigable paid the fees to conceal the nature or source of the illegal proceeds. Id.

2. Exclusion of Tracing Evidence

Amigable argues the district court erred by precluding him from cross-examining a bank representative to establish that the funds paid to the cappers for the referrals were not the actual dollars acquired from the mail fraud. The district court determined this proffered evidence was irrelevant because under section 1956(a)(1) the government need only prove that tainted funds were commingled in an account and, at some point, funds from that account were used to pay the referral fees.

Our standard of review depends upon whether this evidentiary issue presents predominantly factual or legal questions. United States v. Owens, 789 F.2d 750, 753 (9th Cir. 1986), rev'd on other grounds, 484 U.S. 554 (1988). In Owens, we set forth the applicable analysis:

Questions of the admissibility of evidence which

> involve factual determinations, rather than questions of law, are reviewed for an abuse of discretion. When a mixed question of law and fact is presented, the standard of review turns on whether factual matters or legal matters predominate. If an "essentially factual" inquiry is present, or if the exercise of the district court's discretion is determinative, then we give deference to the decision of the district court; otherwise, we conduct de novo review.

Id. (citation omitted).

To resolve the evidentiary issue whether Amigable's tracing evidence is relevant to his defense, we must interpret section 1956(a)(1) of the money laundering statute. Specifically, we have to decide whether this statute requires the government to prove the financial transaction of issuing the checks from the Ragasa Financial Corporation account involved actual tainted dollars or whether the statute is satisfied by showing the tainted

dollars were commingled in that account and funds from the account were used to make the payments. Because this is primarily a legal question of statutory interpretation, we apply the de novo standard of review. See United States v. Jackson, 935 F.2d 832, 839 (7th Cir. 1991); cf. United States v. Thompson, 37 F.3d 450, 452 (9th Cir. 1994).

A representative of the bank testified the Fong and Young settlement checks were deposited in Amigable's client trust account in October 1991. In November 1991, funds were drawn from this trust account and deposited into Amigable's operating account. Funds from this operating account were then deposited into the Ragasa Financial Corporation account. Shortly after this last transfer, the two referral fees were paid using checks drawn on the Ragasa Financial Corporation account. Both of these checks referenced the Fong and Young cases.

Amigable contends his proffered evidence would show

that it was factually impossible that the funds used to pay the referral fees were proceeds derived from the mail fraud because the Ragasa Financial Corporation account reached a zero balance after proceeds from the mail fraud were deposited in the account and before the checks for the referral fees were written. Therefore, Amigable argues, there were no tainted funds in the Ragasa account at the time the referral fee checks were actually issued.

Amigable's argument is predicated upon the assumption that the government must demonstrate the financial transaction of issuing the referral checks involved at least some of the very dollars illegally acquired. We addressed a similar contention in United States v. Garcia. In Garcia, the defendant argued the government had to prove that all the money used in the financial transaction did not involve any untainted funds from a commingled account. Garcia, 37 F.3d at 1364. We rejected this argument and concluded that "under the money laundering

statutes, due to the fungibility of money, it is sufficient to prove that the funds in question came from an account in which tainted proceeds were commingled with other funds." Id. at 1365.

We reasoned a rule requiring the government to segregate tainted from untainted funds would defeat the purposes of the money laundering statute. Id. Such a rule would permit individuals to avoid prosecution simply by commingling funds, id. (quoting United States v. Johnson, 971 F.2d 562, 570 (10th Cir. 1992)); or in the present case, simply by disbursing the illegally obtained funds from the Ragasa Financial Corporation account, depositing clean funds into that account, and then using the clean money to complete the referral fee transaction. This is a classic example of money laundering.

We conclude the government did not have to establish that the proceeds used in the financial transaction to pay the referral fees were part of the actual dollars obtained from the illegal activity. The government established a direct relationship

between the illegally acquired settlement proceeds and the subsequent payment of the referral fees. Amigable designated a portion of the proceeds for payment of the referral fees. The government need not prove the account used to pay the fees maintained a positive balance between the time the illegal proceeds were deposited and when the referral fees were paid.[4] A contrary rule would permit laundering the proceeds of the unlawful activity through a bank account by the simple expedient of flushing the account with clean money as an intermediary step in the money laundering cycle. This is the kind of activity Congress targeted in enacting the money laundering statute. See United States v. Savage, 67 F.3d 1435, 1441 (9th Cir. 1995).

AFFIRMED.

* The panel unanimously finds this case suitable for disposition without oral argument. Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

** The Honorable William J. Rea, United States District Judge for the Central District of California, sitting by designation.

1. Ragasa testified he lent money to Amigable, through the Ragasa Financial Corporation, for the operating expenses of the law firm, in exchange for a promissory note from Amigable.

2. Doan was Amigable's former office administrator. The mail fraud count charged in the indictment was not tried against Doan because Doan is a fugitive.

3. In pertinent part, section 1956(a)(1) provides:

> Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity; or . . .
>
> (B) knowing that the transaction is designed in whole or in part - (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity . . .
>
> . . .
>
> shall be sentenced . . .

4. The term "in fact" in subsection 1956(a)(1) does not require evidence of tracing. This language distinguishes the sting situation in subsection 1956(a)(3), in which proceeds used in the financial transaction are not tainted but are government property. Cf. United States v. Manarite, 44 F.3d 1407, 1414 n. 10 (9th Cir.), cert denied, 115 S.Ct. 2610 (1995).

APPENDIX "B"

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA	) No. 94-10594
	)
Plaintiff-Appellee,	) D.C. No.
	) CR-93-00510-MHP
v.	)
	)
GERONIMO AMIGABLE,	) ORDER
	)
	)

Before: WALLACE and THOMPSON, Circuit Judges and REA, District Judge.[1]

The panel, as constituted above, has unanimously voted to deny the petition for rehearing. Judges Wallace and Thompson voted to reject the suggestion for rehearing en banc, and Judge Rea so recommended.

The suggestion for en banc rehearing has been circulated to the full court, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed R. App. P. 35(b).

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[1] The Honorable William J. Rea, United States District Judge for the Central District of California, sitting by designation.

The petition for rehearing is DENIED, and the suggestion for rehearing en banc is REJECTED.

APPENDIX "C"

18 USC § 1956

Laundering of monetary instruments

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity --

(A)(I) with the intent to promote the carrying on of specified unlawful activity; or

(ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986 [26 USCS § 7201 or 7206]; or

(B) knowing that the transaction is designed in whole or in part --

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under

State or Federal law,

shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States --

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission or transfer is designed in whole or in part --

Shall be sentenced to a fine of $500,000 or twice the value of

the monetary instrument or funds involved in the transportation, transmission, or transfer, whichever is greater, or funds involved in the transportation, transmission, or transfer, whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true.

(3) Whoever, with the intent --

(A) to promote the carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal law,

conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term "represented" means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.

(b) Whoever conducts or attempts to conduct a transaction described in subsection (a)(1), or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of --

(1) the value of the property, funds, or monetary instruments involved in the transaction, or

(2) $10,000.

(c) As used in this section --

(1) the term "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7);

(2) the term "conducts" includes initiating, concluding, or participating in initiating, or concluding a transaction;

(3) the term "financial transaction" means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means, or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(5) the term "monetary instruments" means (i) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) the term "financial institution" has the definition given that term in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder;

(7) the term "specified unlawful activity" means --

(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under subchapter II of chapter 53 of title 31 [31 USCS §§ 5311 et seq];

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving --

(i) the manufacture, importation, sale, or distribution of

a controlled substance (as such term is defined for purposes of the Controlled Substances Act);

(ii) kidnaping, robbery, or extortion; or

(iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978 [12 USCS § 3101(7)];

(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848);

(D) an offense under section 152 (relating to concealment of assets; false oaths and claims; bribery, section 215 (relating to commissions or gifts for procuring loans), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 542 (relating to entry of goods by means of false statements), section 545 (relating to smuggling goods

into the United States), section 549 (relating to removing goods from Customs custody), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 875 (relating to interstate communications), section 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent Federal credit institution entries), 1007 (relating to Federal Deposit Insurance transactions), 1014 (relating to fraudulent loan or credit applications), 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1201 (relating to kidnaping), section

1203 (relating to hostage taking), section 1708 (theft from the mail), section 2113 or 2114 (relating to bank and postal robbery and theft), or section 2319 (relating to copyright infringement) of this title, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 422 of the Controlled Substances Act [21 USCS § 863] (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act [22 USCS § 2778(c)], section 11 (relating to violations) of the Export Administration Act of 1979 [50 USCS Appx. § 2410], section 206 (relating to penalties) of the International Emergency Economic Powers Act [50 USCS § 1705], section 16 (relating to offenses and punishment) of the Trading with the Enemy Act [50 USCS Appx. §16], any felony violation

of section 9(c) of the Food Stamp Act of 1977 [7 USCS § 2018(c)] (relating to food stamp fraud) involving a quantity of coupons having a value of not less than $5,000, or any felony violation of the Foreign Corrupt Practices Act; or

(E) Environmental Crimes, a felony violation of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Ocean Dumping Act (33 U.S.C. 1401 et seq.), the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), or the Resources Conservation and Recovery Act (42 U.S.C. 6901 et seq.).

(8) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(d) Nothing in this section shall supersede any provision of Federal, State or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this

section.

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Postal Service, and the Attorney General. Violations of this section involving offenses described in paragraph (c)(7)(E) may be investigated by such components of the Department of Justice as the Attorney General may direct, and the National Enforcement Investigations Center of the Environmental Protection Agency.

(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if --

(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000./

(g) **Notice of conviction of financial institutions**. In any financial institution or any officer, director, or employee of any financial institution has been found guilty of an offense under this section, section 1957 or 1960 of this title, or section 5322 of title 31, the Attorney General shall provide written notice of such fact to the appropriate regulatory agency for the financial institution.

[h](g) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.